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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID GOODEN,

Defendant and Appellant.

F064549

(Super. Ct. No. 11CM7081)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Donna L. Tarter, Judge.

Elizabeth Campbell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Poochigian, J. and Peña, J.

Defendant and appellant David Gooden contends that the trial court was without jurisdiction to impose a parole revocation fine on him pursuant to Penal Code section 1202.45. Respondent agrees. We will modify the judgment by striking that fine, and affirm the judgment as modified.

FACTS AND PROCEDURAL HISTORY

On February 18, 2010, defendant was serving a life sentence for murder. He was housed at Corcoran State Prison and his cellmate was James Murray. Defendant strangled Murray, and in the morning of February 19, 2010, Murray was found dead in the cell. Pursuant to a negotiated plea, defendant pled no contest to one count of violation of Penal Code section 4500, assault by a life prisoner upon another person with malice aforethought and force likely to produce great bodily injury, in return for dismissal of another count and dismissal of enhancement allegations. The stipulated sentence pursuant to the plea agreement was life in prison without possibility of parole. In addition to that sentence, the trial court imposed certain fines and penalties including, as relevant to this appeal, a \$200 parole revocation restitution fine which, pursuant to Penal Code section 1202.45, the court suspended unless defendant's parole is revoked.

DISCUSSION

Penal Code section 1202.45, at the time of sentencing in this case, provided for imposition of a parole revocation restitution fine in "every case where a person is convicted of a crime and whose sentence includes a period of parole." (See Stats. 2007, ch. 302, § 15.) Defendant's sentence in the present case is life without parole, consecutive to the life sentence he was serving when he committed the present crime. When a defendant is not eligible for parole, imposition of the fine pursuant to Penal Code section 1202.45 is not authorized and must be stricken. (*People v. Battle* (2011) 198 Cal.App.4th 50, 63.)

DISPOSITION

The Penal Code section 1202.45 parole revocation restitution fine is stricken. As modified, the judgment is affirmed. The trial court shall cause preparation of an amended abstract of judgment reflecting the modification to the judgment, and cause the amended abstract of judgment to be sent to the Department of Corrections and Rehabilitation.